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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
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10 CHRIS PARKER, } Case No. 8:18-cv-02103-JVS-JDE
11 } Plaintiff, }
12 } STIPULATION AND
13 } PROTECTIVE ORDER
14 PORTFOLIO RECOVERY }
15 ASSOCIATES, LLC, }
16 } Defendant.
17

18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential,
20 proprietary or private information for which special protection from public
21 disclosure and from use for any purpose other than pursuing this litigation may
22 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
23 to enter the following Stipulated Protective Order. The parties acknowledge that
24 this Order does not confer blanket protections on all disclosures or responses to
25 discovery and that the protection it affords from public disclosure and use
26 extends only to the limited information or items that are entitled to confidential
27 treatment under the applicable legal principles.

1 2. GOOD CAUSE STATEMENT

2 This action is likely to involve trade secrets and other valuable
3 development, commercial, financial, technical and/or proprietary information
4 for which special protection from public disclosure and from use for any purpose
5 other than prosecution of this action is warranted. Such confidential and
6 proprietary materials and information consist of, among other things,
7 confidential business or financial information, information regarding
8 confidential business practices, or other confidential research, development, or
9 commercial information (including information implicating privacy rights of
10 third parties), information otherwise generally unavailable to the public, or
11 which may be privileged or otherwise protected from disclosure under case
12 decisions, or common law. Accordingly, to expedite the flow of information, to
13 facilitate the prompt resolution of disputes over confidentiality of discovery
14 materials, to adequately protect information the parties are entitled to keep
15 confidential, to ensure that the parties are permitted reasonable necessary uses
16 of such material in preparation for and in the conduct of trial, to address their
17 handling at the end of the litigation, and serve the ends of justice, a protective
18 order for such information is justified in this matter. It is the intent of the parties
19 that information will not be designated as confidential for tactical reasons and
20 that nothing be so designated without a good faith belief that it has been
21 maintained in a confidential, non-public manner, and there is good cause why
22 it should not be part of the public record of this case.

23 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
24 PROCEDURE

25 The parties further acknowledge, as set forth in Section 14.3, below, that
26 this Stipulated Protective Order does not entitle them to file confidential
27 information under seal; Local Civil Rule 79-5 sets forth the procedures that must

1 be followed and the standards that will be applied when a party seeks permission
2 from the court to file material under seal. There is a strong presumption that the
3 public has a right of access to judicial proceedings and records in civil cases. In
4 connection with non-dispositive motions, good cause must be shown to support
5 a filing under seal. See Kamakana v. City and County of Honolulu, 447 F.3d
6 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-
7 11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics, Inc., 187 F.R.D. 576, 577
8 (E.D. Wis. 1999) (even stipulated protective orders require good cause
9 showing), and a specific showing of good cause or compelling reasons with
10 proper evidentiary support and legal justification, must be made with respect to
11 Protected Material that a party seeks to file under seal. The parties' mere
12 designation of Disclosure or Discovery Material as CONFIDENTIAL does
13 not—without the submission of competent evidence by declaration, establishing
14 that the material sought to be filed under seal qualifies as confidential,
15 privileged, or otherwise protectable—constitute good cause.

16 Further, if a party requests sealing related to a dispositive motion or trial,
17 then compelling reasons, not only good cause, for the sealing must be shown,
18 and the relief sought shall be narrowly tailored to serve the specific interest to be
19 protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir.
20 2010). For each item or type of information, document, or thing sought to be
21 filed or introduced under seal, the party seeking protection must articulate
22 compelling reasons, supported by specific facts and legal justification, for the
23 requested sealing order. Again, competent evidence supporting the application
24 to file documents under seal must be provided by declaration.

25 Any document that is not confidential, privileged, or otherwise
26 protectable in its entirety will not be filed under seal if the confidential portions
27 can be redacted. If documents can be redacted, then a redacted version for public

1 viewing, omitting only the confidential, privileged, or otherwise protectable
2 portions of the document, shall be filed. Any application that seeks to file
3 documents under seal in their entirety should include an explanation of why
4 redaction is not feasible.

5 4. DEFINITIONS

6 4.1 Action: *Chris Parker v. Portfolio Recovery Associates, LLC*, No. 8:18-cv-
7 02103-JVS-JDE.

8 4.2 Challenging Party: a Party or Non-Party that challenges the
9 designation of information or items under this Order.

10 4.3 “CONFIDENTIAL” Information or Items: information (regardless
11 of how it is generated, stored or maintained) or tangible things that qualify for
12 protection under Federal Rule of Civil Procedure 26(c), and as specified above
13 in the Good Cause Statement.

14 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
15 their support staff).

16 4.5 Designating Party: a Party or Non-Party that designates
17 information or items that it produces in disclosures or in responses to discovery
18 as “CONFIDENTIAL.”

19 4.6 Disclosure or Discovery Material: all items or information,
20 regardless of the medium or manner in which it is generated, stored, or
21 maintained (including, among other things, testimony, transcripts, and tangible
22 things), that are produced or generated in disclosures or responses to discovery.

23 4.7 Expert: a person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its counsel
25 to serve as an expert witness or as a consultant in this Action.
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1 4.8 House Counsel: attorneys who are employees of a party to this
2 Action. House Counsel does not include Outside Counsel of Record or any
3 other outside counsel.

4 4.9 Non-Party: any natural person, partnership, corporation,
5 association or other legal entity not named as a Party to this action.

6 4.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent a party to this Action and have
8 appeared in this Action on behalf of that party or are affiliated with a law firm
9 that has appeared on behalf of that party, and includes support staff.

10 4.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and
12 their support staffs).

13 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 4.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits
17 or demonstrations, and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 4.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 4.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 5. SCOPE

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also (1) any information copied or
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of
3 the trial judge and other applicable authorities. This Order does not govern the
4 use of Protected Material at trial.

5 6. **DURATION**

6 Once a case proceeds to trial, information that was designated as
7 CONFIDENTIAL or maintained pursuant to this protective order used or
8 introduced as an exhibit at trial becomes public and will be presumptively
9 available to all members of the public, including the press, unless compelling
10 reasons supported by specific factual findings to proceed otherwise are made to
11 the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
12 (distinguishing “good cause” showing for sealing documents produced in
13 discovery from “compelling reasons” standard when merits-related documents
14 are part of court record). Accordingly, the terms of this protective order do not
15 extend beyond the commencement of the trial.

16 7. **DESIGNATING PROTECTED MATERIAL**

17 7.1 Exercise of Restraint and Care in Designating Material for

18 Protection. Each Party or Non-Party that designates information or
19 items for protection under this Order must take care to limit any such
20 designation to specific material that qualifies under the appropriate standards.
21 The Designating Party must designate for protection only those parts of
22 material, documents, items or oral or written communications that qualify so
23 that other portions of the material, documents, items or communications for
24 which protection is not warranted are not swept unjustifiably within the ambit
25 of this Order.

26 Mass, indiscriminate or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified or that have been made for

1 an improper purpose (e.g., to unnecessarily encumber the case development
2 process or to impose unnecessary expenses and burdens on other parties) may
3 expose the Designating Party to sanctions.

4 If it comes to a Designating Party's attention that information or items
5 that it designated for protection do not qualify for protection, that Designating
6 Party must promptly notify all other Parties that it is withdrawing the
7 inapplicable designation.

8 7.2 Manner and Timing of Designations. Except as otherwise provided
9 in this Order, or as otherwise stipulated or ordered, Disclosure of Discovery
10 Material that qualifies for protection under this Order must be clearly so
11 designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page
17 that contains protected material. If only a portion of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the
19 protected portion(s) (e.g., by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting Party
22 has indicated which documents it would like copied and produced. During the
23 inspection and before the designation, all of the material made available for
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
25 identified the documents it wants copied and produced, the Producing Party
26 must determine which documents, or portions thereof, qualify for protection
27 under this Order. Then, before producing the specified documents, the

1 Producing Party must affix the “CONFIDENTIAL legend” to each page that
2 contains Protected Material. If only a portion of the material on a page qualifies
3 for protection, the Producing Party also must clearly identify the protected
4 portion(s) (e.g., by making appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party
6 identifies the Disclosure or Discovery Material on the record, before the close of
7 the deposition all protected testimony.

8 (c) for information produced in some form other than documentary
9 and for any other tangible items, that the Producing Party affix in a prominent
10 place on the exterior of the container or containers in which the information is
11 stored the legend “CONFIDENTIAL.” If only a portion or portions of the
12 information warrants protection, the Producing Party, to the extent practicable,
13 shall identify the protected portion(s).

14 7.3 Inadvertent Failures to Designate. If timely corrected, an
15 inadvertent failure to designate qualified information or items does not, standing
16 alone, waive the Designating Party’s right to secure protection under this Order
17 for such material. Upon timely correction of a designation, the Receiving Party
18 must make reasonable efforts to assure that the material is treated in accordance
19 with the provisions of this Order.

20 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time that is consistent with the Court’s
23 Scheduling Order.

24 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process under Local Rule 37-1 et seq.

26 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
27 joint stipulation pursuant to Local Rule 37-2.

1 8.4 The burden of persuasion in any such challenge proceeding shall be
2 on the Designating Party. Frivolous challenges, and those made for an improper
3 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
4 parties) may expose the Challenging Party to sanctions. Unless the Designating
5 Party has waived or withdrawn the confidentiality designation, all parties shall
6 continue to afford the material in question the level of protection to which it is
7 entitled under the Producing Party's designation until the Court rules on the
8 challenge.

9 9. ACCESS TO AND USE OF PROTECTED MATERIAL

10 9.1 Basic Principles. A Receiving Party may use Protected Material that
11 is disclosed or produced by another Party or by a Non-Party in connection with
12 this Action only for prosecuting, defending or attempting to settle this Action.
13 Such Protected Material may be disclosed only to the categories of persons and
14 under the conditions described in this Order. When the Action has been
15 terminated, a Receiving Party must comply with the provisions of section 15
16 below (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at
18 a location and in a secure manner that ensures that access is limited to the
19 persons authorized under this Order.

20 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
21 otherwise ordered by the court or permitted in writing by the Designating Party,
22 a Receiving Party may disclose any information or item designated
23 “CONFIDENTIAL” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this Action,
25 as well as employees of said Outside Counsel of Record to whom it is reasonably
26 necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and

Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

**10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

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1 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO
2 BE PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this Action and designated as "CONFIDENTIAL." Such
5 information produced by Non-Parties in connection with this litigation is
6 protected by the remedies and relief provided by this Order. Nothing in these
7 provisions should be construed as prohibiting a Non-Party from seeking
8 additional protections.

9 (b) In the event that a Party is required, by a valid discovery request,
10 to produce a Non-Party's confidential information in its possession, and the
11 Party is subject to an agreement with the Non-Party not to produce the Non-
12 Party's confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-
14 Party that some or all of the information requested is subject to a confidentiality
15 agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this Action, the relevant discovery request(s), and a
18 reasonably specific description of the information requested; and

19 (3) make the information requested available for inspection by the
20 Non-Party, if requested.

21 (c) If the Non-Party fails to seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party's confidential information
24 responsive to the discovery request. If the Non-Party timely seeks a protective
25 order, the Receiving Party shall not produce any information in its possession
26 or control that is subject to the confidentiality agreement with the Non-Party
27 before a determination by the court. Absent a court order to the contrary, the

1 Non-Party shall bear the burden and expense of seeking protection in this court
2 of its Protected Material.

3 12. UNAUTHORIZED DISCLOSURE OF PROTECTED
4 MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not
7 authorized under this Stipulated Protective Order, the Receiving Party must
8 immediately (a) notify in writing the Designating Party of the unauthorized
9 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
10 Protected Material, (c) inform the person or persons to whom unauthorized
11 disclosures were made of all the terms of this Order, and (d) request such person
12 or persons to execute the "Acknowledgment an Agreement to Be Bound"
13 attached hereto as Exhibit A.

14 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
15 OTHERWISE PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in Federal
19 Rule of Civil\ Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order that provides for
21 production without prior privilege review. Pursuant to Federal Rule of Evidence
22 502(d) and (e), insofar as the parties reach an agreement on the effect of
23 disclosure of a communication or information covered by the attorney-client
24 privilege or work product protection, the parties may incorporate their
25 agreement in the stipulated protective order submitted to the court.

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1 14. MISCELLANEOUS

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of
3 any person to seek its modification by the Court in the future.

4 14.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order, no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed
7 in this Stipulated Protective Order. Similarly, no Party waives any right to object
8 on any ground to use in evidence of any of the material covered by this
9 Protective Order.

10 14.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Local Civil Rule 79-5. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of
13 the specific Protected Material. If a Party's request to file Protected Material
14 under seal is denied by the court, then the Receiving Party may file the
15 information in the public record unless otherwise instructed by the court.

16 15. FINAL DISPOSITION

17 After the final disposition of this Action, as defined in paragraph 6, within
18 60 days of a written request by the Designating Party, each Receiving Party must
19 return all Protected Material to the Producing Party or destroy such material.
20 As used in this subdivision, "all Protected Material" includes all copies,
21 abstracts, compilations, summaries, and any other format reproducing or
22 capturing any of the Protected Material. Whether the Protected Material is
23 returned or destroyed, the Receiving Party must submit a written certification to
24 the Producing Party (and, if not the same person or entity, to the Designating
25 Party) by the 60-day deadline that (1) identifies (by category, where appropriate)
26 all the Protected Material that was returned or destroyed and (2) affirms that the
27 Receiving Party has not retained any copies, abstracts, compilations, summaries

1 or any other format reproducing or capturing any of the Protected Material.
2 Notwithstanding this provision, Counsel are entitled to retain an archival copy
3 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
4 memoranda, correspondence, deposition and trial exhibits, expert reports,
5 attorney work product, and consultant and expert work product, even if such
6 materials contain Protected Material. Any such archival copies that contain or
7 constitute Protected Material remain subject to this Protective Order as set forth
8 in Section 6 (DURATION).

16. VIOLATION

10 Any violation of this Order may be punished by appropriate measures
11 including, without limitation, contempt proceedings and/or monetary
12 sanctions.

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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18 | DATED: March 25, 2019

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John D. Early
United States Magistrate Judge

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EXHIBIT A

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CHRIS PARKER,

Case No. 8:18-cv-02103-JVS-JDE

11 Plaintiff,

12 v.

13 PORTFOLIO RECOVERY
14 ASSOCIATES, LLC,

15 Defendant.

16 DECLARATION OF UNDER
17 STIPULATED PROTECTIVE ORDER

19 I, _____ being duly sworn, declare as follows:

20 My address is

21 _____.

22 My present employer is

23 _____.

24 My present occupation or job description is

25 _____.

26 _____.

27 _____.

1 I hereby acknowledge that: (i) I have been given a copy of the Stipulated
2 Protective Order (“Order”) in the above-referenced case; (ii) I carefully read the
3 Order; and (iii) I understand and am familiar with the terms of the Order.

4 I will comply with all of the provisions of the Order. I will hold all
5 Confidential Discovery Material disclosed to me, including the substance and
6 any copy or summary abstract, in confidence, and will not disclose such material
7 to anyone not qualified under the Order. I will not use Confidential Discovery
8 Material for any purposes other than this case.

9 I will return all Confidential Discovery Material that comes into my
10 possession and all documents and things that I have prepared relating thereto,
11 to counsel for the Party by who I am retained or employed, or from whom I
12 received such material.

13 I hereby submit to the jurisdiction of the United States District Court for
14 the Central District of California for the purpose of enforcement of the Order in
15 this case.

16 I declare under the penalty of perjury that the foregoing is true and correct.
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